Abolition of Minor Municipalities.

MR. K. C. MAMMEN MAPPILLAI:

"This Council recommends to the Government that all Municipalities in the State except those of Kottayam, Alleppey, Quilon, Trivandrum and Nagercoil be abolished."

Improvement of the Main Central Road.

MR. K. C. MAMMEN MAPPILLAI:

"This Council recommends to the Government that the Main Central Road throughout its length be raised above flood level, and be well metalled, and that such other step as may be deemed desirable be taken to protect the road from damage by flood or rains."

Postponement of the Operation of the Civil Courts' Guide.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Sir, I beg to move that:

"*This Council recommends to the Government that the operation of the new Civil Courts' Guide published under the authority of the Government be suspended till the new Civil Procedure Bill becomes law.*"

The High Court of Travancore, with the approval of the Government, have published a new *Civil Courts' Guide* and it has come into operation from the 1st Vrischikam this year. From the short experience of the working of this Guide the people have begun to feel annoyed at the circuitous procedure prescribed by the High Court. Most of the provisions of this Guide are borrowed from the *Madras Civil Courts' Guide*. In British India, the authorities do feel that the procedure followed in the civil courts creates unnecessary delay and the Viceroy in a speech at Calcutta dwelt upon the necessity of simplifying the procedure. When the authorities in British India are dissatisfied with the procedure followed there and when they contemplate to simplify the procedure, we make bold to copy those provisions which they consider obnoxious. The High Court have thought it fit to eschew certain provisions in the *Madras Civil Courts' Guide* which are advantageous to the litigant public. To quote one instance, it is ruled in our *Civil Courts' Guide* that every interlocutory application is to be supported by an affidavit. According to the definition of interlocutory application in the Guide all applications come under the category. Even an application for adjournment is an interlocutory application. If a client is absent on a day when the case is posted for evidence, the vakil will have to put in an application for adjournment together with an affidavit. Those who are intimately connected with courts know that even for the attestation of the affidavit the client will have to spend a small amount. This provision is responsible for the waste of money and stationery. Another provision in the Guide is that the clients will have to put in their applications for adjournment three days before the date of hearing. Many forms are prescribed simply to add to the work of vakil *gumastas* and clerks of the court. By the introduction of the *Civil Courts' Guide*, higher rates of batta, mileage and process fees are fixed. Only the maximum is fixed and the minimum is not mentioned and no discretion is left to the courts to fix a minimum. Some provisions of the Guide contravene the sections of the Civil Procedure Code. For example,

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[Mr. P. K. Narayana Pillai.]

I may mention the time fixed within which an objection to an appeal memorandum may be stated. The Civil Procedure Code enjoins that all objections should be filed seven days before the hearing of the appeal. The Guide prescribes 18 days' time. Though the Code allows the client to state his objections at the time of hearing, the Guide does not allow it. Thus there are very many provisions in the Guide which complicate the procedure, cause unusual delay and cause an additional burden on the litigant public and the lawyers.

When the new Civil Procedure Bill which is on the legislative anvil becomes law the procedure will be considerably changed and very great changes will have to be made in the Guide itself. What I propose is that the operation of this Guide may be suspended till the passing of that Bill and a more simple procedure fixed thereafter in consultation with the litigant public and those who are intimately connected with law courts.

The Guide in question was sprung upon the public. The litigant public were not consulted. It was not published for public criticism. All aspects of the question were not considered by the framers of the Guide.

When this Guide came into operation some Bar Associations requested the High Court to suspend its operation for some time. Though the provisions of the Guide came into operation from the 1st of Vrischikam 1099, the book was not available at that time. The *Civil Courts' Guide* is a book which every client is expected to read. The ignorance of the provisions therein will be no excuse in a court of law. But this book was published in English and even now a translation of it is not available to the public. It is hard to impose penalties upon clients, if they unknowingly contravene the provisions of a Guide which they cannot read and understand. On these grounds I move that the operation of the Guide be suspended till the new Civil Procedure Code Bill becomes law.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): I second the resolution.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I have very great pleasure in supporting the resolution of my friend, Mr. Madhava Variar. I myself had originally sent in a resolution on this subject. But having been strangled by fate in the balloting process it happened to be rejected, and my friend's resolution came in. I am none the less joyful on that account. I am very happy to support this resolution.

One or two particular points I wish to make out in connection with this resolution are these. First the language of the court as may be seen from section 45 of the Civil Procedure Code is not English; it is the vernacular of the land that is considered to be the language of the court. Yet the learned authorities who were responsible for the Guide

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did not enact the measure, as they are legally bound, in the vernacular of the State. At least a translation ought to have been supplied to the litigant public. No such thing has been done hitherto. I need hardly depict the extreme hardship caused to the people. For example, the litigants, many of whom do not know English, are expected to know all these technicalities when they are concerned with notices, petitions, verified petitions, etc., under the Civil Procedure Code. They are expected to know these rules, whatever be the language in which the learned gentlemen who were responsible for this *Civil Courts' Guide* have enacted it, without paying any attention to the situation. It is a very real hardship. It is mainly the litigant public who are expected to master all these intricacies that would be hard put to it; and, even for the legal practitioner it is not easy to master all these rules. The vakils' clerks, who generally know only Malayalam or Tamil, do not know how to proceed under the new Guide which has appeared all on a sudden like a bolt from the blue! In spite of the sacrosanct nature of the High Court which has enacted this particular volume, in spite of the unalterable faith of the people in the infallibility of the High Court in all other respects, is this not really a case of flouting public opinion when the High Court refuse even to publish an authorised translation of the *Civil Courts' Guide* for the guidance of the people?

Further, Sir, though the High Court have authority in enacting these rules, so far as the Civil Procedure Code is concerned, I would submit, generally, as a matter of principle, when the rules are enacted a draft set of rules should be published in the *Gazette* so that the public may have a voice in the matter of deciding upon the wisdom or otherwise of the rules. No such thing has been done in the present instance. A number of rules have been enacted in the present *Civil Courts' Guide* which are being criticised very ably in the *Travancore Law Journal* by a legal practitioner. Sir, may I point out that some of the rules work harshly upon the litigant public? If it is intended for the purpose of facilitating the administration of civil justice, I would submit that the results in the working of the Guide point quite in the opposite direction. But I do not want to offer any detailed criticism with respect to that at present. My own view is that public opinion has to be consulted. Even with respect to legislative measures, that is to say, with respect to the Bills to be passed by this House, they are published for inviting public criticism and then only are the measures passed through the Council. When such is the case, in spite of the fact that we are prepared not a little to respect the pose of the High Court, I would submit that this appears to be an unacceptable piece of judicial legislation.

Thirdly, I would also point out that, with respect to some of the Regulations under which these rules have been framed, those Regulations themselves have been repealed by this Council. For example, it may be seen that some of the rules have been framed under Regulation III of 1057—the Destruction of Records Regulation. This Regulation of

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[Mr. V. Subba Aiyar.]

1057 has been repealed and re-enacted. No doubt, under the General Clauses Regulation, things may be tacked on and the validity may be maintained.

Fourthly, may I also point out that the Civil Procedure Code is undergoing revision and may without delay be submitted to this House. Where is the hurry to enact these rules of practice when the Civil Procedure Code is undergoing modification? In considering the question of subsidiary rules, I have only to submit that the parent Regulation itself is undergoing reconsideration. If we are going to enter into the merits of these rules, it would probably take much more time than this House will legitimately devote to them. I do not wish to proceed to the consideration of that aspect. On all these grounds, I most willingly support this resolution.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, the new civil rules of practice have been promulgated by the High Court under the power vested in them by the Civil Procedure Code and also with the sanction of the Government. It is now proposed by this resolution that those civil rules of practice should be suspended for some time. In a matter of this kind, I should have expected very strong reasons advanced in support of such a resolution, because these rules of practice were very carefully revised. The existing civil rules of practice do not contain a new body of rules. On the other hand, all the existing old civil circulars bearing upon various matters have been collated, consolidated, and, wherever amendments were necessary, amended.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know whether there are no new rules in the *Civil Courts' Guide*?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Wherever amendments are necessary they have been made. All that it contains are not new rules. For our elucidation a vakil has taken the trouble to point out all the new additions in an article in the latest Travancore *Law Journal*. That will show that there are very few amendments which may be called amendments. The rest were in existence at the time when the Guide was framed. In order to enforce these rules properly and without having the necessity to refer to various circulars not easily available to the public, these rules were collected, revised, added and amended. This is the *Civil Courts' Guide*.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know whether these rules were submitted for public criticism?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will come to that. I will answer every one of the arguments.

These rules were drafted not by some petty clerk of the High Court. The Chief Justice and the most experienced Puisne Judge, at the time, were at work for such a long time as eight months. These rules were forwarded to the Bar Associations for their opinion. Whatever opinions were sent to the High Court were considered by them.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Was any suggestion forwarded by the Bar Association accepted by the High Court?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): All the suggestions that were made to the High Court, whether they were necessary or not, were considered.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Was any resolution sent up by the High Court Vakils' Association to say that this should be postponed?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am not aware of that.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Was any resolution sent up after it was published?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is to say, before the 1st of Tulam?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): When Government sanction was obtained—and the Code has been published under the Regulation—it would come into force on a certain day specified in the notification. On the strength of a resolution passed by an association, the High Court may not be justified in suspending the rules.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Were the Civil Rules available for sale at the Government Press?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe they were. Even before that, they were being sent or circulated. Perhaps some of the vakils might not have been in a position to get them. I do not think that that is such a serious matter as to necessitate the suspension of the rules.

As I said, two judges were at work for more than eight months. They went through it, rule after rule. In order that these rules may be suspended we would expect a strong case being made out. Let us see what the various reasons advanced are.

Mr. Madhava Variar said that these rules themselves embodied a circuitous procedure. He said that it was under the contemplation of the Government of India to simplify these rules of procedure to afford ample opportunity to the courts to dispose of cases as early as possible. With reference to that argument, I can only say that the Civil Procedure Code itself prescribes a circuitous procedure, and how that should be enforced is detailed in the civil rules. So long as the Civil Procedure Code is enforced by the Government of India or the Travancore Government, I do not think it will be feasible to amend the civil rules.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Are we not going to amend the Civil Procedure Code?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): A committee to consider the causes of law's delays has been appointed in

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[Mr. P. K. Narayana Pillai.]

British India. It remains to be seen whether the procedure detailed in the Code is going to be cut short. The right of appeal against orders or against appellate decrees will have to be considerably restricted. Unless all these things are done there is not the slightest chance of any civil case being disposed of as early as possible. The present Civil Procedure Code which is now before the House does not simplify the procedure in the courts in the matter of the right to give evidence or the right to put in documents, and the Guide wants to enforce these as rigorously as possible. It is only when these rules are sought to be enforced that the difficulty comes in. It is said that in interlocutory petitions an affidavit is not necessary, and that an interlocutory petition is supposed to include every application. No doubt, the definition in the *Civil Courts' Guide* includes every application filed during the pendency of any suit. When, in the interpretation of these rules, certain hardships are felt by the litigants and they are pointed out, I have not the slightest doubt that the High Court will be quite ready to modify or to amend the rules. The rules came into existence on the 1st Vrischikam and now we are in Makaram. The Vakils, the Judges and the Munsiffs ought not to feel any difficulty in working them.

MR. C. SANKARA MENON (*Quilon*): Does Mr. Subba Aiyar know that two or three hours are taken by the judges every day to see that the applications presented to the courts are in accordance with the rules?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may say that the vakils and the court officers are not quite accustomed to the new rules and their mode of arrangement and that will take some time. But everyone will know the rules very soon. I think the vakils' clerks will get acquainted with them. It is said that some of the provisions may not aid the ministerial work of the various courts, but protract litigation rather than curtail it. On the other hand, some of the provisions are very wholesome and ought to be welcomed. For instance, Mr. Madhava Variar referred to adjournment and the necessity for affidavits. I know, as a matter of fact, that adjournments are freely granted. What the new civil rules of practice require is that one must give an affidavit stating the reasons which necessitated the adjournment, and one must also give notice to the opposite side in order that it may be aware of the reasons and be ready to oppose or agree to the adjournment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How is it possible for a party residing at Todupuzha to file an affidavit where there is no possibility of administering the oath?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It can be done before the magistrate; there is a magistrate at Todupuzha.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) Suppose he suddenly falls ill.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If he suddenly falls ill, the affidavit may be filed later. Falling ill suddenly and getting ill suddenly merely for the purpose of adjournment are two quite different things. If a man suddenly falls ill while travelling in a boat and if he is not able to reach the court in time he can send a wire to his vakil; the vakil will put in that wire in the court, and say that he will put the formal affidavit the next day, on the basis of the telegram. It is not necessary that the affidavit should be directly from the client himself; it may be sworn by somebody else and filed through the vakil. It is with a view to cut short the number of adjournments and for the speedy disposal of cases that this amendment is introduced.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Does Mr. Subba Aiyar know that this is not in the Madras *Civil Courts' Guide*?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, it is not there. I will say why. When a case is taken up for evidence, it is continued from day to day. It is the invariable rule that a case posted up once should be continued.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is it so in the Munsiffs' courts?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, as far as possible. In other words, the number of adjournments given in Madras is far less than what it is here. As I said, there are only one or two instances where it works hardship. But that is intended to expedite the disposal of cases. If there are unforeseen difficulties experienced by parties, the vakils will make representations; if the courts feel any difficulties, the Munsiffs and Judges will make representations to the High Court.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know whether Mr. Subba Aiyar has any idea of the approximate number of affidavits that are filed in a District Court, for instance, in Trivandrum?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have no idea. For, I have never sworn an affidavit myself.

Every statement contained in an application has to be supported by an affidavit. The party is tied down by it and he will be proceeded against if the allegations are untrue. If any difficulty is found in regard to the working of these rules the subordinate courts can make representations to the High Court and they will be ready to consider them.

Then it was asked whether all the representations were considered. I may assure the members that all the representations have been considered. Whatever representations were made—I know as a matter of fact that various Bar Associations were consulted and time was also granted to them by the High Court for representation—they were considered by the High Court.

MR. C. SANKARA MENON (*Quilon*): What was the time given for representations?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): My own idea is that not less than three months were allowed. At any rate, I know three or four months were allowed for the Association at Trivandrum to represent their opinions.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Does Mr. Subba Aiyar know that a communication was sent by the Kottayam Bar Association?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know. But whatever was submitted was received by the High Court, and they have considered it.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I know whether the rules were published in the *Gazette*?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Which rules?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): The *Guide* rules.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): With reference to publishing the Guide previously, I must say that no circular has been ever published as a draft. There are rules which, under certain Regulations, require previous publication; such rules, of course, are published previously, and the public are allowed to express their views in the matter. But the Civil Procedure Code does not provide that all the rules should take effect only after previous publication. As to the practice in the High Court, they have all along been issued as circulars without previous publication. I do not think it is fair to suggest that the civil rules were purposely enacted before previous publication with a view not to get public opinion in the matter. The people who are best to offer criticism in the matter are the members of the Bar Associations. They were consulted. They sent up their views and the High Court took into consideration those views.

Then, again, Mr. Narayana Pillai said something about the language of the Court. It is stated in Section 45 that the plaint should be written in a language other than English. I have already stated that all the rules in the Guide are not new. They were being followed without difficulty. I admit that it would have been better if the translation had also been published. All the vakils that are practising—I mean practically, if not all—know English.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it sufficient if the vakils alone know English? Should not clients also know English to understand the Guide?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I say it would have been better if the translation also had been published. But that ought not to influence us in any way and the rules which had been in force for the last three months should not be suspended because the translation is not published.

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MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): Was there any special necessity for such a hurry?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know whether this measure was enacted hastily.

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattambitta*): May I know what they did during eight months?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Thus much I know. The Chief Justice and Mr. Cheriyan were sitting in their chambers, day after day, going on with these rules. They were engaged, day after day, during court hours, with this work and this work alone, so that, whatever amendments were necessary were made, the existing circulars were revised, and they were put under their proper headings, so that it might be easy for us to pick them up in a moment and to make them, as far as possible, suitable to the present conditions.

Then again, we have been all along urging that the delay in the civil courts has been very long, and there has been pendency for very many years in the High Court. This necessarily suggests that, hereafter, adjournment should not be granted ordinarily and that adjournment applications should be accompanied by affidavits. I think it is a matter that ought to be welcomed rather than criticised.

I was reading to-day the chapter on judgement in the *Civil Courts' Guide*. It states that all the days on which a case was adjourned for final hearing should be noted in the judgment. That would enable the appellate court to know how long a court was engaged in the final hearing of a case. This will enable the High Court to take to task judges or munsiffs if they in any way contribute to the delay. At the time of the budget session, we were concerned with the protracted delay of the civil courts in the disposal of cases, and we found fault with them for not disposing of them early. If we suspend the operation of the civil rules of practice, which the whole body of the High Court consider absolutely necessary for the efficient working of the courts, the only result will be that they will turn round and say: "We framed some rules after mature consideration and deliberation which will be suitable and which will enable us to secure speedy disposal of the cases. The Council put an obstacle to it." The result of it will be, I fear, a worse one. There are instructions and injunctions about the circumstances under which adjournments can be granted. Sometimes parties and vakils consider it desirable to have an adjournment.

MR. C. SANKARA MENON (*Quilon*): Does Mr. Subba Aiyar say that the vakils are interested in having cases postponed?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I never said that. I say that a vakil might not be in a position to attend the court owing to some inconvenience or various other causes. Owing to the inconvenience of the vakils or of the parties it may be necessary to put off the case. In all these cases, adjournments could be avoided and the delay cut short if the Guide is strictly followed.

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[Mr. T. K. Velu Pillai.]

I do not know whether we will be justified in suspending the rules and interfering with the discretion of the High Court to make suitable arrangements for the speedy disposal of the cases. We shall be taking a very serious responsibility if we interfere with that, because they will say that they will not be responsible for the delay in the disposal of cases.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, I have got an ancient right, a statutory privilege, to lend my most emphatic support to the resolution, because, if you look over the records of the proceedings of this Council, it will be seen that in the budget discussion of 1097, I raised the question, and I referred to the attempt to produce a Civil Procedure Code as a kind of electric inspiration to generate the current to kill a fly. I am referring to this expression to carry home to my friends on the other side of the House, that the apprehensions then entertained have more than happened. The litigant world, the hapless clients and helpless vakils are in a state of amazement, in a condition of bewilderment; for, a new planet has shot into the ken, and the planet is—it is not even a planet, it is a comet—which can be described by the vernacular translation, *Dhûmakêtu*, (*laughter*) so that we do not know what we are to do.

Mr. P. K. Narayana Pillai has raised a very important question regarding the language of the court. The explanation that has been offered by Mr. Subba Aiyar is far from convincing. In a country inhabited by educated people, who talk a particular language—or one or two languages—that the vernacular should be always kept in a position of subordination is a proposition which cannot commend itself to me particularly, so far as the proceedings before the courts of law are concerned. I am for extending the scope of vernaculars in this matter. I am one of those who go to the extent of saying that even the arguments of vakils may be in Malayalam, because the clients may have a chance to correct the vakil if the vakil has not studied the facts of the case sufficiently well. I am certainly in favour of English, but not for its being made the language in a subordinate court of law.

The affidavit causes difficulties to all manner of people. Mr. Subba Aiyar, though he opposed the resolution, has conceded that an affidavit can be easily manufactured. If the party is unable to appear he has only to send a telegram, and Mr. Subba Aiyar expects the vakil to find out some person before whom the affidavit may be sworn, as though the vakils or their clerks have motor cars arranged for them to find out some person who would attest that affidavit. My friend was not hitherto put to the necessity of getting an affidavit filed in a court; but I am sure that, considering the extensive and lucrative practice he has, he will be put to the necessity of having affidavits filed any number of times before he leaves the profession. It is difficult, Sir, to get affidavits recorded because a low petty officer will insist on some baksheesh, (*laughter*) some kind of consideration, at least a bland-

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ishment, an entreaty made for the time being by the vakil or his clerk, because he has under the act to request in all humility, in order that the affidavit may have to be forthcoming.

There is a difficulty on the other side—

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Have not the members of this Council power to attest affidavits?

Mr. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am just referring to it. The members of the Council, as has been suggested by my friend, have got the power. Sir, the Travancore Government has given privileges to non-officials. But this privilege, *viz.*, to put a member of this Council in the same category with a head clerk in the Munsiff's Court (*laughter*) is not, so far as the members of this Council are concerned, a pleasing spectacle. They have done it, Sir, as a sop to non-official opinion. And a busy member of this Council who may have his own profession or, if he is an official, who may have his departmental duties, will find it impossible for him to do any business when parties or vakils or vakils' clerks and all manner of people come to them with a telegram which is sent from Todupuzha, as the Law Member put it, to have affidavits sworn before him. The only object will be to put a premium on perjury. It is not insisted that the vakil should put in an affidavit. Any kind of clerk, first rate or third rate, is enough. Something must appear, something must be sworn and a little ink should be spilt on paper and there must be a signature; so that all the advantages that Mr. Subba Aiyar expects of the system are really absent. My friend Mr. Ramakrishna Pillai put a very pertinent question, whether Mr. Subba Aiyar had any knowledge of the number of affidavits that are filed in courts. Sir, I can testify to the circumstance that whole reams of paper are consumed in this enterprise. Mr. Hodgson who is an eminent authority on literature will vouch for the accuracy of what I say when I refer to the controversy between Professor Salmatius and Milton. Milton in order to teach the Professor a good lesson said that the writings that the Professor had produced were fit to be taken to the fish market to pack fish. So this kind of affidavit is absolutely useless. It is troublesome, it will encumber the records, it will entail on this Council the necessity to spend more money, because every court will ask for new almirahs when this is the case. I submit that the question requires reconsideration.

Mr. Subba Aiyar said that the number of new provisions was small. But he knows that if we add one ounce of strichnine to a tumbler full of water, even though the tumbler may be completely filled with water, the people who drink it will die. So, in the same way, these small provisions are creating so much trouble and that argument also fails.

The arguments that have been advanced on this side of the House have not been answered. They are raised in every part of the country and they require examination. No doubt, we do not question the good faith of the High Court. Probably they might have thought it useful, but we have demonstrated that that view of the High Court is not quite right and the matter requires reconsideration.

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[Mr. K. Parameswaran Pillai.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I have great pleasure in supporting the resolution. You might remember, Sir, that at the time when the principle of the Civil Procedure Code was being discussed in this House, the members on this side of the House were unanimous in expressing the apprehension that, if the power of making orders and rules were given to the High Court, it might create hardship. Our apprehensions in that respect have been more than justified by the procedure that the High Court have taken now in having brought into practice the *Civil Courts' Guide* without giving the people an opportunity of expressing their opinion upon the matter. Probably we had agreed to the principle of civil courts legislation being adopted wholesale. We should have added only a few sections of the Civil Procedure Code which form a substantial portion of it and the rest would have been very often altered by the High Court without inviting any public criticism on them. Now, Sir, so far as the present *Civil Courts' Guide* is concerned, from the attitude of those members of the Council who belong to the Bar who are present here, you will see that they are almost uniform in their opinion that there are several provisions in the *Civil Courts' Guide* which work hardship upon the practising lawyers and the litigant public. I am quite surprised to find—knowing as we do some of the provisions of the *Civil Courts' Guide*—that Mr. Subba Aiyar should stand up and oppose the resolution. Probably I say it is his unfortunate position to-day that makes him stand up to oppose the resolution instead of supporting it. If, on the other hand, he had been on this side of the House, I have no doubt that he would have led the opposition to the *Civil Courts' Guide* to-day.

In answering some of the objections raised to the *Civil Courts' Guide* Mr. Subba Aiyar said that it has been provided—that the rule that every application for adjournment should be accompanied by an affidavit has been introduced in the *Civil Courts' Guide*—only to prevent applications for adjournment being put in without any proper ground. He also said that the High Court wanted to prevent people from filing affidavits for the purpose of getting adjournment alone. Well, I submit, if that is the object of the High Court, I think that object will be defeated, because, so far as those who malinger are concerned, they can easily find out somebody before whom to swear an affidavit and apply for an adjournment, and they will easily succeed in getting an affidavit. The difficulty will come in with regard to those people who would not malinger but who are actually in need of an adjournment because they are really sick, and the difficulty of getting affidavits sworn will be in their case very difficult. Mr. Velu Pillai pointed out that that would be another source of corruption in the subordinate service, because, in mofussil stations, you can rarely get very respectable people before whom to swear affidavits. People will probably have to go to the head clerk of the Munsiff's Court who will charge a fee for every affidavit

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sworn before him, and it will be a source of profit to him and a source of corruption in the lower rungs of the department. Of course, Mr. Subba Aiyar was finding fault with the speakers on this side of the House for not pointing out all those provisions of the *Civil Courts' Guide* which worked hardship. As Mr. Narayana Pillai said, if we are only to detail all the difficulties, it will be simply taking up the whole of the time of the Council. Suffice it to say that it has been our actual experience that the Guide has been found to work hardship. Therefore, that is sufficient reason for stating that the provisions of the Guide should not be brought into actual practice till the Civil Procedure Code Bill is passed into law. As the time is up, I do not want to say anything more on this subject. I heartily support the proposition.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Sir, Mr. Subba Aiyar has easily said that if a party is unable to appear at a particular date for his case and if he informs his vakil of his inability, the vakil has to put in an affidavit into the court to that effect and the adjournment of the case is easily got. But I think I can bring to the notice of Mr. Subba Aiyar rule 9 of the *Civil Courts' Guide* which says:

"The party filing an affidavit intended to be ready in support of the application shall give not less than 2 days' notice thereof to other parties who shall be entitled to inspect and obtain copies of the same and to file counter affidavits, shall give notice therefore to the applicant who may inspect and obtain copies of the same and file affidavits in reply."

So a party who puts in an application along with an affidavit for the adjournment of a particular case has to satisfy the requirements of all these formalities. Accordingly, if he wants another adjournment he has to do the same. But, on the other hand, Mr. Subba Aiyar has been telling us that this affidavit is necessary for cutting short a number of adjournments in these courts. Similarly Sir, if we go through a different section of the *Civil Courts' Guide*, we are very much handicapped and there are very many rules in this which cause real hardship. Suppose I get a *vakkalat* from a Nambudiri who resides in British Cochin or in a foreign country asking me to apply for money. Of course, for a vakil to apply for money deposited in court belonging to the party, he has to undergo very many difficulties. Certain sections in this Guide authorise a vakil to get the payment of the money deposited in court on behalf of his party, but a curious incident I shall point out in regard to a schedule attached to the *Civil Courts' Guide*. Of course, it prescribes form No. 31 in which the application for payment of money put into court has to be signed. Many details have to be entered in this form. So the vakil applies for the money and this form has to be signed for the party who resides in British India or in British Cochin or in any other country. Very many difficulties of this nature occur in the *Civil Courts' Guide*, and, as Mr. Paramesvaran Pillai pointed out, it is not necessary to detail them here. So I fully support the resolution.

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[Mr. C. Sankara Menon.]

MR. C. SANKARA MENON (*Quilon*): In supporting the resolution, I propose to confine myself to replying to some of the arguments advanced by Mr. Subba Aiyar. Mr. Subba Aiyar has observed that the opinions were obtained from the Bar Association as well. As a matter of fact it is true; but sufficient time was not given them to study these rules and submit their opinion. Many of the practical difficulties now found could have been avoided if some pleaders of the mofussil courts had also been consulted in the framing of these rules. They would be in a position, at any rate, to point out the practical difficulties and the High Court could have avoided much of the practical difficulties now found in the working of these rules.

I agree with Mr. Subba Aiyar in saying that many of the provisions are very necessary. In fact, there was no uniformity in the forms and procedure of civil courts and I think it is absolutely necessary to have a better form. If the members of the Bar also had been properly consulted in the matter there would have been no room for complaint. Mr. Subba Aiyar observed that all the opinions had been fully considered, and that two senior judges of the High Court were engaged in the preparation of this Guide. If that be so, it seems to me that the work could have been done at a much less cost. I have carefully read all the provisions and I know that the rules were taken from the Madras Civil Rules of Practice.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know how many years of practice Mr. Sankara Menon has put in since he became a standing vakil in the profession?

MR. C. SANKARA MENON (*Quilon*): Twenty-one years of practice.

Another observation of Mr. Subba Aiyar was that, owing to the vigorous working of the rules, vakils find difficulty in getting adjournment of cases. I believe, Mr. Subba Aiyar himself knows that no rules of practice could overcome the ingenuity of vakils (*laughter*) and therefore these rules cannot serve that purpose.

Another argument of Mr. Subba Aiyar was that the High Court would say that the Council was interfering with them and that they were not responsible for the delay in the administration of justice. That is a threat which ought not to deter this Council from doing its duty. (*Hear, hear.*)

If efficient officers had been appointed for the discharge of duties, I think all this delay could have been avoided. The delay is due more to the inefficiency of the judiciary than to anything else. I know they very often accuse vakils of contributing to the delay in the disposal of cases. As the rules of procedure stand, a vakil cannot protract a case for any indefinite length of time if the officer knows his duty well.

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The chief difficulty now is due to the want of a Malayalam translation of these rules. Many of the papers to be presented to a court will have to be attended to by vakils' clerks, and, if the translation of these rules is not available, the vakils themselves will have to attend to these things, for which they cannot find time. As it is, Vakils have to devote their attention more to this than to the study of their case. If a Malayalam translation is available, these difficulties could have been avoided. Before the rules were brought into operation, a Malayalam translation of them should have been furnished, and some time should have been given so that the vakils and their clerks might become familiar with the rules. Therefore, I have great pleasure in supporting this resolution.

MR. JOSEPH PANJIKARAN (*Shertallai*): I move for a closure.

MR. M. N. PILLAI (*Trivandrum*): I second the motion.

The motion for closure was put and carried.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Sir, I introduced this resolution because I found that the operation of the new *Civil Courts' Guide* was creating a lot of difficulties to all parties concerned and I am not convinced by the arguments of the learned Law Member that, if this *Civil Courts' Guide* is suspended, the High Court will find it very difficult to dispose of cases. The learned Law Member was telling us that the new *Civil Courts' Guide* consists of circulars which have already existed before and only very few additions or amendments have been made. I submit that, without these very few amendments and additions, the High Court will be able to carry on the work with the circulars which already exist. Moreover, the Law Member was telling us that the High Court took eight months for making these few additions and amendments, and he was advancing it as an argument for accepting the *Civil Courts' Guide*.

Then, another argument he advanced was that almost all the provisions were incorporated in the new *Civil Courts' Guide* with a view to expedite work in the civil courts. But so far as the working of the new *Civil Courts' Guide* is concerned, I think it is only hindering work or producing more delay; and these points were sufficiently explained by Mr. T. K. Velu Pillai.

I referred to only two or three points in the *Civil Courts' Guide*. I never took this House to be a Select Committee to discuss all the difficulties arising from the working of the *Civil Courts' Guide*. I simply pointed out that there were some difficulties, and I pointed out only certain glaring difficulties of the litigant public. Because I referred only to certain difficulties, it should not be understood that there are not others at all caused by this *Civil Courts' Guide*.

Then another point which was raised was that the public were not given an opportunity to discuss the rules, and the reply given by the Law Member was that circulars are not generally published for the criticism of the public. I submit there is a difference between the circulars which he mentioned and the *Civil Courts' Guide*. The circular

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[Mr. V. Subba Aiyar.]

are generally issued piecemeal and periodically and not in a book form. They are codified in a book form and issued. That was what was done with regard to the High Court circulars. Now, the *Civil Courts' Guide* is a series of rules and it is not a circular. So the argument which he advanced with regard to circulars cannot be reasonably applied to the publication of the *Civil Courts' Guide*. I don't find that all the points which I have raised are answered by the learned Law Member. So I press the motion to a division.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I have already explained the situation. Mr. C. P. Kochukunju Pillai confronted me with quoting a rule. That rule is intended only to cases where an adjournment application has to be made. That does not interfere with the proposition that I laid down.

As for the other point, *i. e.*, if the practical working of any particular rule is found to cause serious hardship to the litigant public, to the vakil, the vakil's clerk or anybody else, if that is pointed out to the High Court, they will be glad to rectify it as far as possible. I do not know whether it would be advisable to suspend the operation of the whole civil rules of practice, because the operation of some of the rules here and there, according to some, would be objectionable. Mr. Sankara Menon said that a good portion of it was acceptable. There is no finality in these matters. If any practical inconvenience is caused, certainly, that is a matter to be placed before the High Court as they are the authority to repeal it. It may be—

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): May I know whether there is any particular difficulty in postponing the application of these rules?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes; because the rules have come into force from the 1st Vrischikam. If we suspend it, the old rules are not revived.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Will not the old rules remain?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The new rules have come into force.

Anyhow no necessity has been made out as to whether it is necessary to suspend the whole thing—

MR. JOSEPH PANJIKARAN (*Shertallai*): Is anybody bound to attest an affidavit although he may have the privilege to do so?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Officers are bound to attest it.

MR. JOSEPH PANJIKARAN (*Shertallai*): Will you kindly quote the Regulation under which the officers are bound to do so?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I cannot do so now.

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MR. P. K. NARAYANA PILLAI: (*Ambalapuzha*): For the information of the House, I shall—

PRESIDENT: You are not in possession of the House, and so you cannot give your opinion.

MR. JOSEPH PANJIKARAN (*Shertallai*): Is it lawful for the officer to get some remuneration for attesting affidavits?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think—

MR. JOSEPH PANJIKARAN (*Shertallai*): What I ask is, is there any statutory duty on any officer that he should attest affidavits? Is it now lawful on his part to claim some remuneration for attesting affidavits?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): People other than officers may attest it. Officers in the headquarters will be in a position to attest affidavits.

MR. JOSEPH PANJIKARAN (*Shertallai*): Is there any Regulation or rule by statute?

PRESIDENT: That is his opinion.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Is Mr. Subba Aiyar aware that the present *Civil Courts' Guide* imposes certain duties on His Highness the Maha Raja? (*Laughter.*)

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am not aware of that.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*) Does not the *Civil Courts' Guide* use the expression "His Highness the Maha Raja shall appoint the Judges"? (*Laughter.*)

PRESIDENT: I shall put this resolution to the vote of the House.

The resolution was put to the vote and was carried, 24 voting *for* and 15 *against*.

PRESIDENT: The next resolution is in the name of Mr. Tariatu Kunjitomman and runs as follows:

"***Appointment of a Committee to Enquire into the Conduct of Government Officers.***

MR. TARIATU KUNJITOMMAN:

This Council recommends to the Government that a Committee consisting of a non-official majority be appointed to enquire whether officers are causing hardships to the people by taking bribes or showing communal partiality in the discharge of their official duties and, if so, to propose the necessary remedial measures."

This should be deemed to have been withdrawn since he is absent.

The Council adjourned at 5-24 P. M. *sine die*.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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